

**Local 466, International Brotherhood of Painters and Allied Trades, AFL-CIO (Skidmore College) and Maurice Victor and Thomas McGovern.**  
Cases 3-CB-6902 and 3-CB-6903

September 29, 2000

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS  
LIEBMAN AND HURTGEN

On May 7, 1997, Administrative Law Judge Howard Edelman issued the attached decision. On June 4, he issued the attached errata [omitted from publication]. The General Counsel filed exceptions. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions<sup>1</sup> and brief and has decided to affirm the judge's rulings, findings,<sup>2</sup> and conclusions, except as modified below and to adopt his recommended Order, as modified and set forth in full below.<sup>3</sup>

The complaint in this case alleges that the Union violated Section 8(b)(1)(A) and (2) of the Act by its conduct towards two dissident union members, Maurice Victor and Thomas McGovern. In June 1995,<sup>4</sup> Victor, McGovern, and another union member filed internal charges against union business manager, Louis DiFiore, and union president, Walter Marinelli. The charges alleged, among other things, that DiFiore and Marinelli had failed to hold required elections of officers. The International found merit in the charges and ordered the Local to hold an election.

Victor credibly testified about statements made by DiFiore at two preelection union meetings. On August 1, DiFiore announced to the gathered membership that "when the International is done investigating him, it's going to be his turn to retaliate." At the August 26 meeting, DiFiore stated that "when this is over with, some-

one's going to get hurt and it ain't going to be Mr. Louie P. DiFiore."

The union election was held on October 6. A DiFiore-Marinelli candidate slate defeated one headed by Victor and McGovern. On the day of the election, Victor and his running mates distributed a campaign leaflet which accused DiFiore and Marinelli of union financial mismanagement. On October 10, DiFiore and Marinelli filed internal charges against Victor and McGovern alleging, among other things, that they had engaged in certain conduct during the election campaign that constituted "slander" as well as "disloyalty to the Brotherhood." Victor was separately charged with "conduct unbecoming to an officer of the Brotherhood." McGovern was separately charged with "disrupting union meetings."

Following a trial on the charges on November 3, the Respondent's trial board voted to expel Victor and McGovern from membership in the Union. In addition, Victor was fined \$700 and McGovern was fined \$500. Although Victor and McGovern were painters who had been referred by the Respondent for employment with Skidmore College and other area employers, there is no evidence that their employment was affected by the internal disciplinary action taken against them.

The judge found that the two statements by DiFiore at the August union meetings constituted 8(b)(1)(A) threats to take unspecified reprisals against Victor and McGovern because of their protected intraunion challenges to DiFiore's and Marinelli's leadership of the Union. Relying on Board precedent holding that intraunion disciplinary action against dissident member activity is unlawful, even in the absence of any impact on the employment relationship,<sup>5</sup> the judge also found that the Respondent Union violated Section 8(b)(1)(A) by filing internal charges against Victor and McGovern, and by fining and expelling them from membership in response to their intraunion dissident activity. For the reasons discussed below, we affirm the judge's 8(b)(1)(A) finding regarding DiFiore's retaliatory threats, but we reverse his finding that the internal union disciplinary actions were unlawful.

In *Office Employees Local 251 (Sandia National Laboratories)*, 331 NLRB No. 193 (2000), issued subsequent to the judge's decision, the Board overruled the precedent which the judge followed in finding that the intraunion discipline of Victor and McGovern was unlawful. The Board held that "8(b)(1)(A)'s proper scope, in union discipline cases, is to proscribe union conduct against union members that impacts on the employment relationship,

<sup>1</sup> There are no exceptions to the judge's failure to address the amended complaint allegation that an October 29 telephone message from the Respondent's John Randall to Maurice Victor threatened unspecified reprisals in violation of Sec. 8(b)(1)(A).

<sup>2</sup> The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

<sup>3</sup> The General Counsel and the Respondent except to the provision in the judge's errata ordering the Respondent to preserve financial records. They note that no remedial backpay claim is involved here. We find merit in these exceptions and shall modify the Order accordingly.

<sup>4</sup> All dates are in 1995.

<sup>5</sup> *Teamsters Local 186 (AGC of California)*, 313 NLRB 1232 (1994); *Laborers Local 652 (Southern California Contractors' Assn.)*, 319 NLRB 694 (1995). See also *Carpenters Local 22 (Graziano Construction Co.)*, 195 NLRB 1 (1972).

impairs access to the Board's processes, pertains to unacceptable methods of union coercion . . . or otherwise impairs policies imbedded in the Act." *Id.*, slip op. at 3. The Board concluded that it would "no longer proscribe intraunion discipline under Section 8(b)(1)(A) which involves a purely intraunion dispute, and does not interfere with the employee-employer relationship, or contravene a policy of the National Labor Relations Act." *Id.*, slip op. at 10.

The dispute in *Sandia*, much like the one at issue here, involved a quarrel between two rival union factions regarding internal union policies and politics. The victorious faction imposed sanctions on their rivals that included removal from union office and suspension or expulsion from union membership. The Board found that the intraunion dispute and resulting disciplinary action "neither impacts the participants' relationship with their employer nor impairs a policy of the Act." *Id.*, slip op. at 8. It therefore concluded that the respondent union did not violate Section 8(b)(1)(A).

We reach the same conclusion here with respect to the disciplinary actions taken against Victor and McGovern. The disciplinary proceedings arose entirely within the confines of internal union affairs, had no impact on the relationship of those involved to any employer, and impaired no policy of the Act. In accord with *Sandia*, we find that the Respondent's intraunion disciplinary actions did not violate 8(b)(1)(A).

We affirm, however, the judge's finding that DiFiore's statements at the two union meetings were unlawful threats. The Board in *Sandia* reaffirmed longstanding precedent holding that Section 8(b)(1)(A) proscribes threats of economic reprisals and physical violence by unions against employees. DiFiore's statements that "it would be his turn to retaliate" and that "someone" other than he "is going to be hurt" after the election and the International's investigation of him, were threats of unspecified reprisals that reasonably could be viewed as not limited to internal union disciplinary action.<sup>6</sup> We therefore find that the Respondent, through DiFiore, violated Section 8(b)(1)(A) by making these threats of unspecified reprisals.

#### ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge, as modified and set forth in full below and orders that the Respondent, Local 466 International Brotherhood of

Painters and Allied Trades, AFL-CIO, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Threatening its employee members with unspecified reprisals because they engage in protected intraunion activities.

(b) Attempting to cause Skidmore College, or any other employer with whom Respondent has a collective-bargaining or other hiring relationship, to discharge or not to employ employee members of Respondent because they engage in protected intraunion activity.

(c) In any like or related manner restraining or coercing employee members in the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Notify Skidmore College, in writing, that it has no objection to Skidmore College hiring Victor or McGovern.

(b) Within 14 days after service by the Region, duplicate and mail, at its own expense, copies of the attached notice marked "Appendix,"<sup>7</sup> signed by the Respondent's authorized representative, to all members of the Respondent Union at their home addresses.

(c) Furnish to the Regional Director signed copies of the aforesaid notice for posting by Skidmore College, if willing.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

MEMBER HURTGEN, dissenting in part.

I agree with my colleagues and the judge that the Respondent violated Section 8(b)(1)(A) by threatening unspecified reprisals against union members, Maurice Victor and Thomas McGovern, because of their Section 7 protected activity of challenging incumbent union leaders. I also agree that the Respondent violated Section 8(b)(2) by attempting to cause Skidmore College to terminate Victor and McGovern because of these protected activities. Contrary to my colleagues, however, I further find that the Respondent unlawfully imposed discipline against Victor and McGovern because of their protected activities. Specifically, I agree with the judge's conclusion that the Respondent violated Section 8(b)(1)(A) by bringing Victor and McGovern up on charges, fining them, and expelling them from union membership.

<sup>6</sup> Indeed, the judge also found that the Respondent violated Sec. 8(b)(2) by subsequently attempting to cause the Employer to terminate its employment of Victor and McGovern. *Sandia* does not affect this finding and, for the reasons set forth in the judge's decision, we affirm it.

<sup>7</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Consistent with my concurrence in *Sandia National Laboratories*,<sup>1</sup> I find that the Respondent's discipline is cognizable under the National Labor Relations Act (the Act) as well as the Labor-Management Reporting and Disclosure Act (LMRDA). Thus, this discipline coerced Victor and McGovern in the exercise of their Section 7 right under the Act to speak out about union policy and candidates and was contrary to policies imbedded in Section 101(a)(2) of the LMRDA.<sup>2</sup>

I recognize that, in *Sandia*, I concluded that—in the interest of comity, efficiency and economy, and to avoid having two tribunals plowing the same ground—I would leave the parties to their recourse under the LMRDA. However, I would not do so here. Thus, as I stated in *Sandia*, I would stay the Board's involvement only in situations where the “underlying dispute is wholly intraunion, and the discipline is wholly internal and *nonmonetary*.” (Emphasis added.) Here, however, the discipline imposed by the Respondent included fines to Victor and McGovern of \$700 and \$500, respectively. Thus, the discipline affected them not simply in their relationship to the Union, but also in their pocketbook. Where, as here, the unfair labor practice has an economic consequence for the victims, I would redress that consequence under the remedial provisions of the NLRA.

Accordingly, I find that the Respondent additionally violated Section 8(b)(1)(A) by bringing Victor and McGovern up on charges, by fining them and by expelling them from membership.<sup>3</sup>

#### APPENDIX

##### NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT threaten our employee members with unspecified reprisals because they engage in protected intraunion activities.

WE WILL NOT attempt to cause Skidmore College, or any other employer with whom we have a collective-bargaining or other hiring relationship with, to discharge

or not to employ our employee members because they engage in protected intraunion activity.

WE WILL NOT in any like or related manner restrain or coerce our employee members in the rights guaranteed them by Section 7 of the Act.

WE WILL notify Skidmore College, in writing, that we have no objection to Skidmore College hiring Victor or McGovern.

#### LOCAL 466, INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES, AFL-CIO

Alfred M. Norek, Esq., for the General Counsel.

William Pozefsky, Esq. (Pozefsky, Bramley & Murphy), for the Respondent.

#### DECISION

##### STATEMENT OF THE CASE

HOWARD EDELMAN, Administrative Law Judge. This case was tried before me on August 23, 1996, in Albany, New York. On April 24, 1997, a complaint issued against Local 466, International Brotherhood of Painters and Allied Trades, AFL-CIO (the Respondent). The complaint, based on charges filed by Maurice Victor and Thomas McGovern, individuals, alleged that Respondent imposed monetary fines on Victor and McGovern, and expelled them from membership for their engaging in protected activities in violation of Section 8(b)(1)(A) of the Act.

Upon the entire record in this case, including my observation of the demeanor of the witnesses, and a consideration of the briefs filed by counsel for the General Counsel and counsel for Respondent, I make the following findings of fact and conclusions of law.

Respondent is a labor organization within the meaning of Section 2(5) of the Act. It represents painters engaged in the building trades. In its operation, it refers painters to various employers, including Skidmore College. Skidmore College, is a New York corporation, with its principal office and place of business located in Saratoga Springs, New York, and is engaged in the operation of an educational institution. During the past 12 months, Skidmore, in the course and conduct of its usual business operations derived gross revenues in excess of \$1 million, excluding contributions which, because of limitation by the grantor, are not available for general operating expenses. During the past 12 months, Skidmore, in the course and conduct of its business, purchased and received at its College, goods and materials valued in excess of \$5000 directly from points located outside the State of New York.

It is admitted that Skidmore has been engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

Maurice Victor, became a member of Local 466 in 1984. In 1990 he was appointed vice president by Local 466 Business Manager Louis DiFiore. In 1991 he ran and was elected for the position of recording secretary. Victor was appointed assistant business agent by DiFiore in 1991 and held his position until June 1995.

In April 1994 Victor raised with DiFiore a concern that union elections were supposed to be held that year. DiFiore re-

<sup>1</sup> *Office Employees Local 251 (Sandia National Laboratories)*, 331 NLRB No. 193 (Aug. 25, 2000).

<sup>2</sup> I find support for this position in *Scofield v. NLRB*, 394 U.S. 423, 430 (1969), wherein the Court held that a union could not impair a policy that “Congress has imbedded in the labor laws.”

<sup>3</sup> Because these fines are intertwined with the nonmonetary discipline of bringing Victor and McGovern up on charges and expelling them from membership, I would resolve all three under the Act. That is, if the NLRB is to consider part of the case, it should consider all of the case.

sponded that Victor was mistaken.<sup>1</sup> Victor did not choose to pursue the matter further at that time.<sup>2</sup>

On May 17, 1995, Victor, in his capacity as recording secretary, received a communication from the International Brotherhood of Painters & Allied Trades, here, "the International," requesting verification of the election to be held in June 1995. Victor showed the communication to DiFiore at the monthly union meeting of June. DiFiore responded that the letter was wrong but he would check into it.

At the June 1995 meeting, attended by approximately 17 members, Thomas McGovern distributed a one-page document, prepared by McGovern, Victor, and member Peter Casertino, raising specific issues regarding internal operations of the Local.

DiFiore, after reading the document, came up to McGovern and began swearing. A short "shouting match" thereafter ensued between the two.<sup>3</sup> Walter Marinelli, Respondent's president, who entered the meeting after the confrontation, was approached by DiFiore who said he wanted to bring McGovern up on charges and fine him \$500. Member John Beach intervened, pointing out that Marinelli did not even know what was going on and stating that if McGovern was going to be fined then DiFiore should be fined also. The "confrontation" later appeared to be resolved with DiFiore and McGovern agreeing that it had been a heated argument and they would let it ride.<sup>4</sup>

On June 16, McGovern, Casertino, and Victor preferred internal charges against DiFiore and Marinelli regarding the conduct of the two in running the Local, including failing to hold elections.<sup>5</sup> In a letter dated August 16, sent in reply to the June 16 charge, International President Monroe, announced that general organizer, Frank Potter, had been assigned to investigate the matter and had reported that elections had not been held since 1991 and that DiFiore held the position of treasurer and financial secretary without having secured permission from the International as required by the International's constitution. The letter pointed out other deficiencies in the Local's admini-

stration and made recommendations as to what remedial steps needed to be taken.

At the monthly union meeting in August 1995, Victor credibly testified that DiFiore told the membership that when the International is done investigating him it would be his turn to retaliate and that he would rather hand the Local over to the Albany Local then see Victor get in as business manager.

On August 26, a meeting was held at the Ramada Inn in Glens Falls. Present were Potter, Casertino, Victor, Marinelli, and DiFiore. Porter informed the individuals that he would be present to monitor the election. During the course of the meeting, DiFiore commented, "When this is over with, someone's going to be hurt, and it ain't going to be Mr. Louie P. DiFiore."<sup>6</sup> By letter of August 26, Victor, McGovern, and Casertino wrote International President Monroe expressing concerns over the threatening remarks made by DiFiore.

By letter dated September 5, addressed to International President Monroe, Victor, McGovern, and Casertino expressed concerns about the pending election. Monroe responded internal changes.

A slate with Victor, Casterino, and McGovern was nominated in September to run against a slate headed by DiFiore and Marinelli. The DiFiore slate prevailed at the election held on October 6.

On the night of the election, Victor distributed a handout consisting of one page attached to the Local's LM-3 form, raising concerns about the DiFiore administration, to members outside the meeting hall. The document was prepared by Victor with input from McGovern and Castertino.

By letter dated October 11, addressed to International President Monroe, Victor and McGovern raised questions concerning the election. Monroe responded by letter dated October 19 and November 7. Victor and McGovern sent another letter to the International, raising concerns over the election, dated November 14.

On September 19, Victor handed a letter to Glens Falls National Bank and Trust, herein the "Bank" seeking certain information as to Local trust fund records overseen by the Bank. Victor credibly testified that he sought the information because he was concerned about commingling of various union funds. Victor signed the communication as recording secretary and trustee.<sup>7</sup> By letter dated September 22, Victor made a more detailed request for information from the Bank. The Bank subsequently provided Victor with certain information related to his request.

Victor corresponded with representatives of the International in letters dated September 26, September 29, and October 2, raising additional concerns relating to the administration of the Local.

On October 10, DiFiore and Marinelli brought internal charges against Victor, McGovern, and Casertino. The charges in substantial part refer to the communication of September 5.

<sup>1</sup> I find that the General Counsel's witnesses Victor, McGovern, and Peter Casertino were credible witnesses. I was impressed with their demeanor. They answered all questions put to them on direct and cross-examination in detail. Moreover, their testimony on cross-examination was consistent with their direct testimony, and mutually corroborative. Further, Respondent put on only two witnesses in its defense, Louis DiFiore, Respondent's business manager, and John Randall. Their entire testimony, direct and cross-examination, covered only five transcript pages. In DiFiore's testimony, he admitted threatening Victor and a Respondent member, Peter Casertino, at a Respondent meeting held on August 26, 1995, that "when this is over someone is going to get hurt, and it ain't going to Louis P. DiFiore," a reference to the office elections, within Respondent's organization.

In short, I credit Victor, McGovern, and Casertino and discredit DiFiore and Randall whenever their testimony is inconsistent with the General Counsel's witnesses.

<sup>2</sup> Under the Local's bylaws, and under the Labor-Management Reporting and Disclosure Act, elections are required to be held every 3 years.

<sup>3</sup> Heated exchanges, with swearing was common at meetings.

<sup>4</sup> I find McGovern to be a credible witness as set forth above in fn. 1.

<sup>5</sup> The three later chose not to pursue the charges, electing to redress their concerns through other channels.

<sup>6</sup> DiFiore substantially corroborates Victor's recollection of his meeting. See fn. 1.

<sup>7</sup> Victor had been informed by DiFiore, on becoming recording secretary, that he was also a trustee. As of 1995 of the supposed six trustees, three were dead and one had moved out of the area.

On October 20, McGovern and Victor preferred internal charges against Marinelli and DiFiore.

On October 29, Victor telephoned Respondent recording secretary, John Randall, to ascertain what was going on with the charges he had filed. Victor left a message with Randall's wife who said she would have Randall return the call. That evening Randall left a message on Victor's telephone answering machine saying he would be happy to meet with Victor over the weekend to discuss whatever Victor want. The message ended, "I just want to let you and Tom know that you got something coming to you."

The hearing on the charges against Victor, McGovern, and Casertino was held on November 3. The Local's trial board minutes reflect, inter alia, that Victor was guilty by reason of passing out the LM-3, contacting the Bank, and slander contained in the September 5 and October 6 communications. McGovern was similarly found guilty by reason of the September 5 and October 6 communications. The trial board imposed a \$700 fine on Victor and expelled him from membership. McGovern was fined \$500 and expelled.

Casertino has been employed on a full-time basis for 11 years by Skidmore College in the position of lead painter. Casertino attended a meeting in October 1995 in the business office at Skidmore which was held to clarify issues raised by employees concerning whether fringe benefit contributions has been properly computed. In the course of the meeting, attended by DiFiore, Marinelli, and representatives of Skidmore, Casertino credibly testified that<sup>8</sup> DiFiore commented that "there's some internal stuff going on and anybody who is not in good standing with the Local Union will not be able to come back to work here."<sup>9</sup> In the course of the conversation DiFiore mentioned McGovern and Victor.

The "Appeal Answer Blank," dated January 22, 1996, prepared by Respondent's trial board for submission to the International, contains a detailed explanation of the charges and the trial board's reasoning in finding Victor and McGovern guilty. The charge allegation and trial board explanation to the International are set forth below.

(a) As to Victor

*Section 253—Paragraph 3*

The Trial Board was made aware that Mr. Victor was trying to enlist support and gain signatures in an effort to have B.A. Louis DiFiore and Pres. Walt Marimnelli removed from office. It is the sentiment of the Trial Board that Mr. Victor, while holding the office of Rec. Sec. and at the same time serving unofficial "assistant" to Business Agent DiFiore used his position as leverage in an attempt to influence members. It has been common knowledge among Local Union 466 members, for several years, that Mr. Victor might assume the duties of Business Agent upon the retirement of

current Business Agent DiFiore. The fact that Mr. Victor acted outside Union guidelines and procedures, in a covert manner, led the Trial Board to an unanimous decision of guilty. His actions were not "promoting the harmony" or "preserving the dignity of the Brotherhood," but served to alienate members and is considered a violation of his oath of office.

*Section 253—Paragraph 4*

The Trial Board finds that Mr. Victor disputes the findings of the International and threatens to go to state and federal agencies. (See Item III, specifically.) The fact that Mr. Victor chose not to resolve anything at the Local level, but went directly to the International and when matters were not resolved to suit his needs made threatening statements, showed a disregard for the Constitution and members of the Brotherhood from the local level on up. Mr. Victor has shown an unwillingness to properly work within the guidelines and procedures of the Constitution and therefore the Trial Board found him unanimously guilty because of the disloyalty to the Brotherhood.

*Paragraph 5—Conduct unbecoming to an officer of the Brotherhood.* Passing out LM-3 (Labor Organization Annual Report of Local Union 466) on street to not only union members—but passerby's. This was done by the Recording Secretary and his teenage son.

*Section 253—Paragraph 5*

Mr. Victor misrepresented himself as a trustee to the bank of Local Union 466, requesting pension information that he was not entitled to. The Trial Board viewed this as conduct unbecoming an officer and therefore unanimously found him guilty.

*Paragraph 6—Negligence, inefficiency, or incompetency in the performance of duties.*

Did not perform his duties as Recording Secretary.

Did not read correspondence pertinent to union matters to union membership.

*Section 253—Paragraph 6*

As Rec. Sec., the minutes that Mr. Victor kept were found to be inadequate, incomplete and in at least one case a page or pages were missing. The Trial Board found Mr. Victor unanimously guilty because of his negligence, inefficiency and incompetence in the performances of his duties. Mr. Victor also failed to advance and promote the interests of the members of the Brotherhood by performing acts detrimental to such interests of the Brotherhood.

*Paragraph 7—Utilization of officer's official position to engage in enterprises contrary to good morals and sound trade union principles. (i.e.) Misappropriation of funds from Skidmore College for 3 years.*

*Section 253—Paragraph 7*

Mr. Victor inaccurately accused B.A. DiFiore of misappropriating funds and other accusations. (See Item II specifically.) The Trial Board failed to see any basis for these accusations, finding that Mr. Victor used his official position to engage in enterprises which were inimical to the welfare of this organization and

<sup>8</sup> I credit Casertino. See fn. 1.

<sup>9</sup> Skidmore employs three painters on a year-round basis. During the summer additional men are obtained by contacting the Union. McGovern and Victor had regularly been sent by the Union to work at Skidmore during the summer.

contrary to good morals and sound trade union principles and therefore unanimously guilty.

*Paragraph 10—Slander.* See attached letter dated 10/06/95, paragraphs 1, 2, 3, 4, 5, 6 and 9.

*Section 253—Paragraph 10*

Please refer to Item II specifically.

The Trial Board felt this item was an attempt to mislead members of Local Union 466, as it is not accurate. The Trial Board found Mr. Victor unanimously guilty because of the libeling content.

*Paragraph 14—Disputes General Executive Board.* See attached letter dated 09/05/95.

*Section 253—Paragraph 14*

Please refer to Item III specifically.

The Trial Board viewed this item as a blatant disrespect for the Brotherhood and agrees this item speaks for itself, therefore finding Mr. Victor unanimously guilty.

(b) As to McGovern

The charge allegations and trial board explanations for McGovern are set forth below.

*Section 253 of the Constitution*

*Paragraph 4—Disloyalty to Brotherhood*

See attached letter dated 09/05/95.

*Section 253—Paragraph 4*

The Trial Board finds that Mr. McGovern, working closely with Mr. Victor, disputes the findings of the International and threatens to go to state and federal agencies. (See Item III, specifically.) The fact that Mr. McGovern chose not to resolve anything at the local level, but went directly to the International and when matters were not resolved to suit his needs made threatening statements, showed a disregard for the Constitution and members of the Brotherhood from the local level on up. Mr. McGovern has shown an unwillingness to properly work within the guidelines and procedures of the Constitution and therefore the Trial Board found him unanimously guilty because of his disloyalty to the Brotherhood.

*Paragraph 7—Engaging in enterprises which are inimical to the welfare of the union and are contrary to good morals and sound trade union principles.*

(i.e.) misappropriation of funds from Skidmore College for 3 years.

*Section 253—Paragraph 7.*

Mr. McGovern, acting with Mr. Victor, accused B.A. DiFiore of misappropriating funds and other accusations. (See Item II specifically.) The Trial Board failed to see any basis for these accusations. Mr. McGovern engaged in activities that were not in the best interest of Local Union 466, but were limited to the welfare of this organization and contrary to good morals and sound trade union principles and therefore unanimously guilty.

Please refer to Items I, II, III, and The Trial Board response to Sec. 253, paragraphs 4, 10, 11 and 14.

*Paragraph 10—Slander*

Letter dated 10/06/95—Paragraphs 1, 2, 3, 4, 5, 6, and 9.

*Section 253—Paragraph 10*

Please refer to Item II specifically.

The Trial Board felt this item was an attempt to mislead members of Local Union 466, as it is not accurate. The Trial Board found Mr. McGovern unanimously guilty because of the libeling content.

Please refer to Items I, II, III, and the Trial Board response to Section 253, paragraphs 4, 7, 11, and 14.

*Paragraph 11—Abusing fellow members or officers in the meeting hall. (i.e.) Accusations of thievery of the Business Manager and ethnic slurs toward Business Manager and President before and during meeting held June, 1995.*

*Section 253—Paragraph 11*

The Trial Board was made aware of the conduct of Mr. McGovern during the regular June meeting. He was found unanimously guilty of abusing fellow members or officers in the meeting hall and disrupting union meetings.

*Paragraph 14—Disputes General Executive Board.*

See attached letter dated 09/05/95.

*Section 253—Paragraph 14*

Please refer to Item II specifically. The Trial Board viewed this item as a blatant disregard for the Brotherhood and agrees this item speaks for itself, therefore finding Mr. McGovern unanimously guilty.

Please refer to Items I, II, III, and the Trial Board response to Section 253, paragraphs 4, 7, 10, and 11.

Analysis and Conclusions

The controlling principle is succinctly summarized in *Teamsters Local 186 (AGC)* 313 NLRB 1232, 1234 (1994).

For many years the Board has ruled that efforts by a union member/employee to attempt to change current policies of the union which represents him or to politically oppose an incumbent officer of that union are the exercise of rights guaranteed by Section 7 of the Act and provisions of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA, 29 U.S.C. § 401, etc.) enunciating employee rights. [Footnotes omitted.]

See also *Teamsters Local 413 (Refiners Transport)*, 316 NLRB 343, 350 (1995) (“An employee’s protest of conduct (real, or in good faith perceived) by the officers of a labor organization is generally protected by the Act . . . . That protection can be lost by conduct such as violence committed during the otherwise protected protest.”); *Laborers Local 652 (Southern California Contractors’ Assn.)*, 319 NLRB 694, 699 (1995); “In sum, Respondent has failed to demonstrate that Sandoval would have brought charges against Castillo, et al, absent their concerted activities protected by Section 7 of the Act, that is, their right not only to support a dissident slate of candidates, but to question and oppose the incumbent officers at Respondent’s monthly membership meetings.”

Attempts by a union to cause an employer to remove an employee because of the employees “protected intra union poli-

tics” are violative of Section 8(b) (2) of the Act. *Wenner Ford Tractor Rentals, Inc.*, 315 NLRB 964 (1994).

The appropriate make-whole remedy for cases involving unlawful internal union discipline includes rescission of fines and discipline, reinstatement to membership and notice mailing to the membership. See, e.g., *Machinists District 91 (Pratt & Whitney)*, 278 NLRB 39, 50–51 (1986).

The Appeal Answer Blank vividly reveals that Victor and McGovern were disciplined for engaging in activities protected not only the National Labor Relations Act but independently by the Labor-Management Reporting and Disclosure Act. Among the violations alleged to be committed by Victor include “trying to enlist support and gain signatures to have B.A. Louis DiFiore and President Walt Marinelli removed from office; “disputing/putting/the findings of the International and threatening to go to state and federal agencies” at Section 253—paragraph 4; distributing LM-3’s and “requesting pension information.” Additional “sins” included distribution of the September 5 and October 6 communications which allegedly constitute “libeling.” McGovern’s “sins” substantially parallel Victor’s.

In view of the startling admissions contained in the internal union documentation, it is hardly surprising that Respondent chose not to offer a scintilla of evidence or argue at the hearing that the charges were motivated by lawful considerations.

The statements of DiFiore made to officials of Skidmore and the other threats made by DiFiore to take revenge against Victor and McGovern stand substantially un rebutted and independently violate the Act, as set forth below.

#### CONCLUSIONS OF LAW

1. Skidmore is an employer within the meaning of Section 2(2), (6), and (7) of the Act.

2. Respondent is a labor organization within the meaning of Section 2(b) of the Act.

3. Respondent has threatened members with unspecified reprisals because they engaged in protected intraunion activity in violation of Section 8(b)(1)(A).

4. Respondent Union brought internal union charges against employees Victor and McGovern because they engaged in protected intraunion activity in violation of Section 8(b)(1)(A).

5. Respondent Union imposed fines, and expelled from membership in Respondent, employees Victor and McGovern because they engaged in protected intraunion activity in violation of Section 8(b)(1)(A).

6. Respondent Union attempted to cause Skidmore to terminate the employment of members Victor and McGovern, in violation of Section 8(a)(3) of the Act, because they engaged in protected intraunion activity in violation of Section 8(b)(1)(A) and (2).

#### REMEDY

Having found that Respondent Union engaged in unfair labor practices in violation of Section 8(b)(1)(A) and (2) of the Act, I shall recommend that it be ordered to cease and desist therefrom, and take such affirmative action necessary to effectuate the policies of the Act.

In view of the fact that Respondent Union does not have a formal place of business meetings are conducted at the Eagles Club South Glens Falls, I shall additionally recommend that it be required to mail copies of the notice to each member of Respondent Union.

[Recommended Order omitted from publication.]